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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,622	11/21/2003	Moshe Levnat	847-072	3492

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EXAMINER	
TAMAI, KARL I	

ART UNIT	PAPER NUMBER
2834	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/719,622	LEVNAT, MOSHE	
	Examiner	Art Unit	
	Tamai I.E. Karl	2834	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 May 2007*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2 and 6-16* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2 and 6-16* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The use of the trademark ThermaPlex has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 16 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The specification does not contain a written description of the resolver being sealed.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 10 is rejected because "a lubricant compatible with FDA oversight" is vague and indefinite. It is unclear which lubricants are considered compatible for a sealed bearing. For the purpose of advancing prosecution on the merits, any bearing lubricant which is sealed can be considered compatible for FDA oversight since the sealed lubricant will not contact the food or medicine.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

7. Claim 1, 2, 6, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lincoln Motors (Signatures Series and Ultimate E Motors, High Performance and Premium Efficiency) and Leeson Electric (Washdown-Duty Motors have IRIS Insulation System) and Nagate et al. (Nagate)(US 5349248). Lincoln motors teaches an unsealed motor that is used in food preparation with steel frames that can be cleaned by being washed through the motor in harsh environments. Lincoln Motors teaches a steel frame being stronger and more rigid than cast iron. Lincoln Motors does not teach a stainless steel frame or a permanent magnet rotor in a stainless steel sleeve. Lesson

teaches stainless steel motor frames are corrosion resistant for demanding food processing applications. Nagate teaches the rotor sealed in a stainless steel sleeve 23 to protect against corrosion. It would have been obvious to a person of ordinary skill in the art at the time of the invention to construct the Wash Thru motor of Lincoln motors with a stainless steel housing because Leeson teaches it is the best material for food applications and because Lincoln motors teaches that steel has a good resistance to cracking; and with a permanent magnet rotor in a stainless steel sleeve to provide corrosion resistance to the motor, and because Lesson suggests the rotor and stator should include anticorrosion coatings.

Regarding claim 2, the machines is configured to operate as a motor which inherently configured to generate heat and permits the washing fluid to be driven off.

8. Claim 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lincoln Motors (Signatures Series and Ultimate E Motors, High Performance and Premium Efficiency) and Leeson Electric (Washdown-Duty Motors have IRIS Insulation System) and Nagate et al. (Nagate)(US 5349248), in further view of Kenny (US 6652249). Lincoln Motors, Leeson Electric, and Nagate teach every aspect of the invention except the motor with a resolver or encoder. Kenny teaches wet pumps have permanent magnet rotors 87 with resolver or encoder (col 10, line 15) controls to provide an integrated, self contained, pump, motor and a control unit with is inexpensive and easy to assemble. It is would have been obvious to a person of ordinary skill in the art at the time of the invention to construct the motor of Lincoln Motors, Leeson Electric,

and Nagate with the motor being a permanent magnet motor or a control with a resolver or encoder because Kenny teaches the wet motor can be designed inexpensively and which is easy assemble, where the resolver or controller provides control of motor to overcome load variations.

9. Claim 10 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lincoln Motors (Signatures Series and Ultimate E Motors, High Performance and Premium Efficiency) and Leeson Electric (Washdown-Duty Motors have IRIS Insulation System) and Nagate et al. (Nagate)(US 5349248), in further view of Butler et al. (Butler)(US 6087308). Lincoln Motors, Leeson Electric, and Nagate teach every aspect of the invention except the food grade lubricant, particularly Theramplex. Butler teaches a lubricant for machinery having incidental food contact with good resistance to wear, oxidation and rust. It is would have been obvious to a person of ordinary skill in the art at the time of the invention to construct the motor of Lincoln Motors, Leeson Electric, and Nagate with the food grade lubricant of Butler to provide a lubricant safe for incidental contact with food and providing good resistance to wear, oxidation and rust.

In regards to claims 14, selection of a specific brand of food grade lubricant, such as Thermaplex, is obvious to provide a good lubricant that is safe for incidential food contact, and because it has been held that selection of the material based on intended use is within the ordinary skill in the art (See *In re Leshin*, 125 USPQ 416).

10. Claim 7 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lincoln Motors (Signatures Series and Ultimate E Motors, High Performance and Premium Efficiency) and Leeson Electric (Washdown-Duty Motors have IRIS Insulation System) and Nagate et al. (Nagate)(US 5349248), in further view of Kikuchi et al. (Kikuchi)(JP 2002-136055). Lincoln Motors, Leeson Electric, and Nagate teach every aspect of the invention except the motor with a resolver being unsealed. Lincoln motors teaches the motor in an unsealed housing. Kikuchi teaches the resolver is positioned in a sealed housing to allow low cost and easy mounting. It is would have been obvious to a person of ordinary skill in the art at the time of the invention to construct the motor of Lincoln Motors, Leeson Electric, and Nagate with the sealed resolver of Kikuchi to provide rotational information with a sealed housing to allow low cost and easy mounting.

11. Claim 7 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lincoln Motors (Signatures Series and Ultimate E Motors, High Performance and Premium Efficiency) and Leeson Electric (Washdown-Duty Motors have IRIS Insulation System) and Nagate et al. (Nagate)(US 5349248), in further view of Kitazawa et al. (Kitazawa)(JP 06-065617). Lincoln Motors, Leeson Electric, and Nagate teach every aspect of the invention except the motor with a resolver being unsealed. Lincoln motors teaches the motor in an unsealed housing. Kitazawa teaches the resolver is positioned in the same housing as the motor to provide accurate rotational information. It is would have been obvious to a person of ordinary skill in the art at the time of the invention to

construct the motor of Lincoln Motors, Leeson Electric, and Nagate with the unsealed resolver of Kitazawa to provide accurate rotational information.

12. Claims 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lincoln Motors (Signatures Series and Ultimate E Motors, High Performance and Premium Efficiency) and Leeson Electric (Washdown-Duty Motors have IRIS Insulation System) and Nagate et al. (Nagate)(US 5349248), in further view of Perl (US 3750951). Lincoln Motors, Leeson Electric, and Nagate teach every aspect of the invention except the method of cleaning the motor including the allowing the washing fluid to enter and drain from the motor with the motor being operated to dry the motor. Lincoln teaches the washing fluid is allowed to enter the motor housing and suggest draining the motor because it is a wash-thru motor. Lincoln does not teach the motor being operated to dry the motor. Perl teaches the motor being operated to assist in drying (col. 5, line 40). It is would have been obvious to a person of ordinary skill in the art at the time of the invention to construct the motor of Lincoln Motors, Leeson Electric, and Nagate washed by allowing the washing fluid to enter and drain from the motor housing with the motor being operated to remove residual washing fluid because Lincoln teaches allowing water to wash thru the motor housing reduces maintenance costs, and with the motor being operated after washing use the heat generated by the motor to assist in drying, as taught by Perl.

In regards to claim 13, it would have been obvious to remove the motor from the driven device during cleaning to provide a thorough cleaning or washdown.

Double Patenting

13. Claims 11-13 are directed to an invention not patentably distinct from claims 10-12 of commonly assigned 10/719,768. Specifically, the current claims require an electric motor with stainless steel exposed surfaces and a stainless steel housing.

The U.S. Patent and Trademark Office normally will not institute an interference between applications or a patent and an application of common ownership (see MPEP Chapter 2300). Commonly assigned 10/719,768, discussed above, would form the basis for a rejection of the noted claims under 35 U.S.C. 103(a) if the commonly assigned case qualifies as prior art under 35 U.S.C. 102(e), (f) or (g) and the conflicting inventions were not commonly owned at the time the invention in this application was made. In order for the examiner to resolve this issue, the assignee can, under 35 U.S.C. 103(c) and 37 CFR 1.78(c), either show that the conflicting inventions were commonly owned at the time the invention in this application was made, or name the prior inventor of the conflicting subject matter.

A showing that the inventions were commonly owned at the time the invention in this application was made will preclude a rejection under 35 U.S.C. 103(a) based upon the commonly assigned case as a reference under 35 U.S.C. 102(f) or (g), or 35 U.S.C. 102(e) for applications pending on or after December 10, 2004.

14. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct

from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

15. Claims 11-13 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 10-12 of application number 10/719,768 in further view of Perl (US 3750951). Claims 11-13 of the current application of the same as claims 10-12 of the copending application (10/719,622) except the current claims require an electric motor with stainless steel exposed surfaces and a stainless steel housing. Perl teaches both a stainless steel housing 64 and a motor with a stainless steel can 70 between the rotor and the stator. It would have been obvious to make the claimed motor of copending application 10/719,768 with the stainless steel components of Perl to allow thermal dissipation from the motor to the pumped fluid as taught by Perl.

Response to Arguments

16. Applicant's arguments filed 05/03/2007 have been fully considered but they are moot in view of the new grounds of rejection.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karl I.E. Tamai whose telephone number is (571) 272 - 2036.

The examiner can be normally contacted on Monday through Friday from 8:00 am to 4:00 pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Darren Schuberg, can be reached at (571) 272 - 2044. The facsimile number for the Group is (571) 273 - 8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KARL TAMAI
PRIMARY EXAMINER

Karl I Tamai
PRIMARY PATENT EXAMINER
July 19, 2007